IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 10TH SEPTEMBER 2007 / 19TH BHADRA 1929

Bail Appl..No. 5407 of 2007()

CMC.1204/2007 of DISTRICT COURT, THALASSERY
CRIME NO.382/2007 OF THALASSERY POLICE STATION

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: PETITIONER/1ST ACCUSED

MUHAMMED ONASIS,
S/O BABU MULIYEKAL,
AGED 30 YEARS, BEACHES, PIER ROAD,
THALASSERY.

BY ADV. SRI.C.P.PEETHAMBARAN

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTING STATION
HOUSE OFFICER, THALASSERY POLICE STATION, THROUGH
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 10/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.5407 of 2007

Dated this the 10th day of September, 2007

ORDER

Application for anticipatory bail. The petitioner is the 1st accused. Altogether there are 3 accused persons. The complainant is one of the Directors (owners) of a Jwellery shop. The petitioner was allegedly in the employment of the company. The crux of the allegation is that the petitioner had misappropriated gold ornaments entrusted to him. He had made false documents to make it appear that the gold ornaments have been sold on credit to certain persons. It was found on enquiry that they were fictitious persons. There is a further allegation that the gold ornaments in the jwellery were thieved also by the petitioner. Investigation is in progress. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner is in no way responsible for the alleged sale to allegedly fake persons. The petitioner was employed only as a collection agent. It is further submitted that the petitioner has no responsibility for the gold ornaments which were found thieved/missing from the premises. In these circumstances, it is prayed that anticipatory bail may be granted to the petitioner.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that there are no circumstances justifying or warranting the invocation of the discretion under Section 438 Cr.P.C. The learned Public Prosecutor submits that the materials collected do point to the complicity of the petitioner and at any rate it is not necessary to invoke the powers under Section 438 Cr.P.C. It is prayed that the petitioner may not be permitted to arm himself with an order of anticipatory bail. Such a direction would hamper the smooth course of investigation, submits the learned Public Prosecutor.

4. Having considered all the relevant inputs, I find merit in the opposition by the learned Public Prosecutor. I am not persuaded to agree that in the facts and circumstances of this case that the petitioner cannot be permitted to arm himself with an order of anticipatory bail. This, I am satisfied, is a fit case where the petitioner must resort to the ordinary and normal course of appearing before the learned Magistrate having jurisdiction or the Investigating Officer and then seek regular bail in the ordinary course.

5. This application is, in these circumstances, dismissed, but I may hasten to observe that if the petitioner surrenders before the Investigating Officer or the learned Magistrate and applies for bail after

giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

(R.BASANT, JUDGE)

rtr/-